Apr 10, 2000

Supreme Court, U.S.
FILED
APR 10 2000
CLERK

Nos. 99-224, 99-582

In the
Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
Petitioners,

v.

RICHARD A. FRENCH, *et al.*,
Respondents.

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

REPLY BRIEF OF PETITIONERS CHARLES B. MILLER, *et al.*

KAREN M. FREEMAN-WILSON
Attorney General of Indiana
JON LARAMORE
Counsel of Record
Deputy Attorney General
219 State House
Indianapolis, IN 46204
317-233-6582

TABLE OF CONTENTS

I. The Department of Justice's construction of the statute is unsupported and unconvincing 2

II. The automatic stay limits federal courts' power in a constitutional manner 6

A. The automatic stay does not impermissibly alter a judgment.....6

B. Section 3626(e)(2) does not preclude the Judicial Branch from deciding cases.....9

C. Section 3626(e)(2) does not prescribe a rule of decision.....12

D. The automatic stay applies equally to consent decrees 13

E. The automatic stay is not retroactive.....14

Conclusion 15

TABLE OF AUTHORITIES

Cases

Benjamin v. Jacobson, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S. Ct. 72 (1999) 7
Berwanger v. Cottey, 178 F.3d 834 (7th Cir. 1999) 8
Board of Education v. Dowell, 498 U.S. 237 (1991) 14
Cagle v. Hutto, 177 F.3d 253 (4th Cir. 1999) 13
Dougan v. Singletary, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S. Ct. 2375 (1998). 8
French v. Duckworth, 178 F.3d 437 (7th Cir. 1999) 4
Gavin v. Branstad, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 2374 (1998) 8
Hadix v. Johnson, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S. Ct. 2368 (1998) 8
Hayburn's Case, 2 U.S. (2 Dall.) 408 (1792) 7
Hecht Co. v. Bowles, 321 U.S. 321 (1944) 5
Honig v. Doe, 484 U.S. 305 (1988) 5
Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3d Cir. 1999) 8
In re Scott, 163 F.3d 282 (5th Cir. 1998) 9
Inmates of Suffolk Co. Jail v. Rouse, 129 F.3d 649 (1st Cir. 1997) 7
Kerr v. U.S. District Ct., 426 U.S. 394 (1976) 9
Landgraf v. USI Film Products, 511 U.S. 244 (1994) 14
Pennsylvania v. Wheeling & Belmont Bridge Co., 54 U.S. 518 (1855) 8
Phillips v. Joint Legislative Committee, 637 F.2d 1014 (5th Cir. 1981), *cert. denied*, 456 U.S. 960 (1982) 11

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995) 6, 7
Plyler v. Moore, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997) 8
Robertson v. Seattle Audubon Society, 503 U.S. 429 (1992) 8
Scripps-Howard Radio, Inc. v. Federal Communications Comm'n, 316 U.S. 4 (1942) ... 4, 5
United States v. Klein, 80 U.S. (13 Wall.) 128 (1871) 12
Watson v. Ray, 192 F.3d 1153 (8th Cir. 1999) 13
Yakus v. United States, 321 U.S. 414 (1944) 7

Constitutional Provisions

Art. I, §8 8
Art. III, §2 ..... 8, 13

Statutes

18 U.S.C. §3142(d) 9
18 U.S.C. §3162(a) 9
18 U.S.C. §3626(a) 4, 10
18 U.S.C. §3626(b) 1, 8
18 U.S.C. §3626(b)(1) 11
18 U.S.C. §3626(b)(3) 4, 7, 10
18 U.S.C. §3626(e)(2) ..... passim
18 U.S.C. §3626(e)(3) 4
18 U.S.C. §3626(e)(4) 4
56 Stat. 33 5

Rules

Fed. R. Civ. P. 23 11
Fed. R. Civ. P. 37 11
Fed. R. Civ. P. 65 8

Nos. 99-224, 99-582

In the
Supreme Court of the United States

CHARLES B. MILLER, SUPERINTENDENT OF THE PENDLETON CORRECTIONAL FACILITY, *et al.*,
Petitioners,

v.

RICHARD A. FRENCH, *et al.*,
Respondents.

On Writs of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

**REPLY BRIEF OF PETITIONERS
CHARLES B. MILLER, *et al.***

In the Prison Litigation Reform Act, Congress struck a balance between prisoners' rights to obtain federal equitable redress for constitutional violations and states' rights to operate their prisons free of judicial intervention. The PLRA narrowed district courts' equitable discretion to prolong existing prison injunctions and consent decrees. 18 U.S.C. §3626(b). The automatic stay at issue in this case, 18 U.S.C. §3626(e)(2), gives teeth to the congressional goal of prompt judicial action on motions to vacate prison injunctions once constitutional violations have been eradicated.

Part I below explains that Congress carefully crafted the automatic stay to attain this goal by providing a clear cut-off date after which judicial inaction would lead to unequivocal consequences. Part II demonstrates that Congress carefully crafted the automatic stay to meet constitutional requirements: the automatic stay only prospectively affects the federal courts' enforcement power. It does not disturb the underlying judgment or undermine the judicial power to rule on the merits of the motion to vacate.

I. The Department of Justice's construction of the statute is unsupported and unconvincing.

The Department of Justice's construction of §3626(e)(2) contradicts the clear congressional purpose, which was to provide an incentive for federal courts to act promptly on motions to vacate prison injunctions. The Department's construction – that the automatic stay is perpetually subject to the equitable power to enjoin its application – lacks support in the statutory text or case law. Moreover, neither the prisoner-plaintiffs nor any *amicus* agrees with the United States' construction of the statute.

Congress enacted the PLRA out of concern about delays in processing prisons' motions to vacate and modify judgments, and Congress created the automatic stay to give district courts incentives to act quickly to process those motions. Congress enacted the automatic stay not only out of concern that some federal courts remained involved in prison operations too long, but also because it viewed then-existing procedural tools as insufficient to promptly end federal judicial involvement.

Thus, only if the automatic stay is truly automatic – not perpetually extendable as the Department would have it – can Congress's goal be met and the balance Congress struck

in the PLRA be preserved. *See Br. for United States* at 24 (discussing "delicate balance" struck by Congress in the PLRA). The practical result of the Department's approach would be to eliminate the certainty Congress intended and replace it with discretionary decisions on preliminary injunctions subject only to abuse-of-discretion appellate review.

The Department's assertion that there is a "clear statement"-type rule for displacement of federal equitable jurisdiction is unsupported. The Department argues that Congress must speak with special clarity and force when it ousts ordinary equitable powers of the federal courts. *Br. for United States* at 14. But its assertion is incorrect. No case prescribes any specific standard or form of words for Congress to indicate its intention to preclude federal courts from using their ordinary equitable powers.

In any event, the automatic stay provision of the PLRA *is* a clear congressional indication of intent to displace traditional federal equitable authority. Its language, contents, and arrangement show clear congressional intent to preclude equitable authority to enjoin the automatic stay after the statutory 90-day period has passed. *See Br. of Petitioners Miller, et al.* at 14-16. Also, as explained in detail in the *Brief Amici Curiae of Association of State Correctional Administrators, et al.*, at 3-13, the legislative history also unequivocally supports the automatic nature of the stay in §3626(e)(2).

The statute, which is titled "automatic stay," uses mandatory language to indicate that a state's filing of a motion to vacate "shall operate as a stay" as of the thirtieth day after the motion is filed. 18 U.S.C. §3626(e)(2). "Even though we do not lightly assume that Congress meant to restrict the equitable powers of the federal courts, we find it impossible to read this language as doing anything less than

that." *French v. Duckworth*, 178 F.3d 437, 443 (7th Cir. 1999). The explicit statutory provision that the time period may be extended only once, for a period up to 60 additional days, further indicates that Congress did not intend the perpetual extensions espoused by the Department. 18 U.S.C. §3626(e)(3).

Moreover, the statute as a whole indicates congressional rejection of the Department's position. In §3626(b)(3), the statute indicates the *only* manner in which the automatic stay does not come into effect. The district court is authorized to continue its injunction *only* "if the court makes written findings based on the record that prospective relief remains necessary to correct a current and ongoing violation of the Federal right . . ." The United States' position that preliminary injunctive relief is readily available in relation to the automatic stay is belied by §3626(a), which significantly restricts the availability of preliminary injunctive relief in cases involving prisons.

Another structural element, the immediate appeal provision in §3626(e)(4), supports the automatic nature of the stay. The drafters inserted this provision in 1997, after some courts had failed to enforce the automatic stay, to ensure that any effort to impede the automatic implementation of the stay could promptly be presented to an appellate court. As Judge Diane P. Wood wrote for the Seventh Circuit panel, "The drafters of the PLRA realized that they were skating close to the line in (e)(2), and they wanted to ensure that the issue that is now before us could be resolved in an interlocutory appeal." *French*, 178 F.3d at 443.

The cases cited by the Department of Justice will not bear the weight they have been assigned, as the prisoners also admit. *Br. for French* at 32 n.8. *Scripps-Howard Radio, Inc. v. Federal Communications Comm'n*, 316 U.S. 4 (1942), construed a statute that gives the federal courts certain review

powers over FCC decisions, although not explicitly the equitable power to stay an administrative order. *Id.* at 8-9. The Supreme Court ruled that the failure to explicitly include the power to stay in the relevant statute did not preclude the federal courts from staying FCC decisions. *Id.* at 10. *Scripps-Howard* thus construed the omission of an explicit grant of equitable power, not the kind of explicit limitation on federal equitable power in the PLRA.

Hecht Co. v. Bowles, 321 U.S. 321 (1944), dealt only with construction of statutory language conferring equitable power. The question was whether a particular statute required an injunction under certain circumstances, and the Court ruled that it did not because the specific statutory language did not mandate issuance of an injunction. *Id.* at 322, 328-29.[1] It is not at all a case about the general nature of federal equitable power.

Likewise, *Honig v. Doe*, 484 U.S. 305 (1988), dealt with whether a federal court can exercise its general equitable authority in a statutory scheme that displaces *parties'* ordinary discretion. *Id.* at 323-27. Because *parties'* discretion, not federal courts' general equitable authority, was the subject of the legislation, *Honig* provides little guidance in this case where Congress explicitly undertook to cabin the ordinary equitable power of federal district courts.

The Department has changed its position on the constitutionality of §3626(e)(2), now contending that it is constitutional even if construed as the prisoners, the State,

[1] The statutory language construed in *Hecht* illustrates the point. The statute mandated that if certain facts were proved, "a permanent or temporary injunction, restraining order, or other order shall be granted . . ." 56 Stat. 33 (quoted in *Br. for United States* at 14-15). The Court ruled only that the statutory language itself did not mandate an injunction because an "other order" was allowable under the statute. 321 U.S. at 328.

and the Seventh Circuit construed it. *Br. for United States* at 37. In the Seventh Circuit, the Department argued that the automatic stay was unconstitutional if so construed. *Seventh Circuit Br. for the United States* at 37-40. The Department's change undercuts application of the doctrine of constitutional doubt.

The language, structure, and purpose of the automatic stay all indicate that it is what it is labeled – automatic. These factors sufficiently show congressional intent to alter federal courts' ordinary equitable powers.

II. The automatic stay limits federal courts' powers in a constitutional manner.

The automatic stay is a proper limitation on federal courts' power and does not violate the Constitution. The automatic stay may temporarily deprive prisoners of the benefit of an injunction – but only during the time period when prisoners are unable to prove that they are harmed by a current federal law violation requiring federal injunctive correction.

The automatic stay leaves the judgment intact until the district court itself alters the judgment. The automatic stay also preserves the authority of the Judicial Branch to rule on the merits of the motion and prescribe appropriate relief if a violation is found.

A. The automatic stay does not impermissibly alter a judgment.

The prisoners' reliance on *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), is faulty because the automatic stay has no effect whatsoever on the underlying district court judgment itself. The automatic stay affects only the district court's prospective enforcement authority, which Congress

has the power to change. *E.g., Yakus v. United States*, 321 U.S. 414, 433-40 (1944) (act precluding interlocutory injunction against rules promulgated under Emergency Price Control Act is constitutional).

Plaut stands for the proposition that Congress cannot reopen judgments that are already final. Litigants who win judgments such as those in *Plaut* have vested rights that cannot be disturbed by legislation that retrospectively divests them of their rights. *Plaut*, 514 U.S. at 218-19, 225.

But the automatic stay does not act on the judgment itself, only on the district court's prospective equitable authority. This difference is much more than semantic. It shows that Congress set up a system that respected the fundamental difference in the function of the branches.

Congress did not undertake to review the merits of any district court injunction. *Cf. Hayburn's Case*, 2 U.S. (2 Dall.) 408 (1792) (Constitution prohibits legislative review of court judgments). That power remains solely with the district court. Rather, Congress changed the federal district courts' authority to enforce prospective injunctive relief. Under §3626(e)(2), the injunctive relief remains in place, but it cannot be enforced by the parties absent the showing of ongoing federal law violations required by §3626(b)(3).

The courts of appeals have recognized that Congress acted within its authority by drafting the PLRA to change the substantive law governing prospective relief available to prisoners. All eight courts of appeals that have passed on the issue have decided that Congress had the power to establish new criteria for injunctive relief in the prison context and to apply those criteria prospectively to injunctions granted in the past. *Inmates of Suffolk Co. Jail v. Rouse*, 129 F.3d 649 (1st Cir. 1997); *Benjamin v. Jacobson*, 172 F.3d 144 (2d Cir. 1999) (*en banc*), *cert. denied*, 120 S. Ct. 72 (1999);

Imprisoned Citizens Union v. Ridge, 169 F.3d 178 (3d Cir. 1999); *Plyler v. Moore*, 100 F.3d 365 (4th Cir. 1996), *cert. denied*, 520 U.S. 1277 (1997); *Hadix v. Johnson*, 133 F.3d 940 (6th Cir.), *cert. denied*, 118 S. Ct. 2368 (1998); *Berwanger v. Cottey*, 178 F.3d 834 (7th Cir. 1999); *Gavin v. Branstad*, 122 F.3d 1081 (8th Cir. 1997), *cert. denied*, 118 S. Ct. 2374 (1998); *Dougan v. Singletary*, 129 F.3d 1424 (11th Cir. 1997), *cert. denied*, 118 S. Ct. 2375 (1998).

The substantive law that changed in the PLRA was not the law governing the subject matter of the dispute (here, the Eighth Amendment, which Congress cannot change), but rather the law governing federal court power. *See Robertson v. Seattle Audubon Society*, 503 U.S. 429, 437-39 (1992) (change in underlying law justifies reopening prospective component of judgment). The prisoners argue, in a footnote, that all of the circuits misapplied *Robertson* when they found that §3626(b) changed the underlying law and that §3626(b) also is unconstitutional. *Br. for French* at 17 n.3. Although this issue is not before the Court, the prisoners are wrong because the circuits properly concluded that §3626(b) is the type of statutory change that may alter prospective relief under *Robertson* and *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 U.S. 518 (1855).

The prisoners also incorrectly attack the analogy between the automatic stay in the PLRA and the automatic stay in bankruptcy. *Br. for French* at 19-20. It is of no moment that the bankruptcy stay has its roots in the Article I, §8 bankruptcy power. The automatic stay's roots are in a constitutional provision of similar significance, namely the Article III, §2 power of Congress to control federal court jurisdiction.[2]

[2] Temporary restraining orders under Fed. R. Civ. P. 65 are similar to the automatic stay in that that may be extended, as preliminary injunctions, but only on a specified showing. Similarly, prison injunctions may be extended under the PLRA, but only after the showing specified in

The prisoners also err in labeling mandamus an effective remedy in this case. *Br. for French* at 19. Mandamus cannot be a complete remedy for the ills Congress sought to address in the PLRA because it is always discretionary. *Kerr v. U.S. District Ct.*, 426 U.S. 394, 403 (1976); *see also In re Scott*, 163 F.3d 282, 284 (5th Cir. 1998) (declining to grant mandamus when district court failed to rule on motion to vacate prison injunction pending for more than two years). Moreover, the process of seeking mandamus, including briefing, argument, and obtaining the decision, itself consumes the time Congress deemed precious when it enacted the automatic stay.

The prisoners cannot show that the PLRA's automatic stay impermissibly alters a judgment. Rather, the statute permissibly restricts federal courts' prospective equitable power.

B. Section 3626(e)(2) does not preclude the Judicial Branch from deciding cases.

The automatic stay preserves the Judicial Branch's core function to rule on cases and to prescribe relief when a violation of law is found. The prisoners misdescribe the statute when they say that the judiciary "is rendered powerless because, regardless of the facts and circumstances, it loses its ability to act after thirty (30) or ninety (90) days." *Br. for French* at 25. Contrary to their contentions, the statute neither "prevents a court from engaging in its core function of judicial decisionmaking," nor "deprive[s] the courts of the

§3626(b)(3). Other statutes attach mandatory consequences to courts' failure to act within a specified time period. *E.g.*, 18 U.S.C. §3142(d) (pretrial detainee is released if court fails to make findings in 10 days); 3162(a) (indictment is dismissed if prisoner not brought to trial within statutory time period). *See Br. for French* at 26-27 (discussing these provisions).

ability to act to preserve the existing judgments during the pendency of the action, regardless of the circumstances." *Br. for French* at 26.

The prisoners' hyperbolic description overlooks the fact – plain on the face of the statute – that the prisoners are entitled to federal injunctive relief at any time they prove an ongoing violation of federal law. 18 U.S.C. §3626(b)(3). The prisoners' brief often completely ignores this provision, which is an essential part of the balance Congress struck between the prisoners' right to federal court protection and the states' right to be free of judicial interference in the absence of a federal violation.

The PLRA protects the core function of the judiciary not only because the judgment remains inviolate until the district court acts on the motion to vacate, but also because the district court retains the power – at any time – to impose whatever injunctive relief is appropriate under the substantive standards of the PLRA when prisoners show an ongoing violation of federal law. 18 U.S.C. §3626(a), (b)(3). The 90-day "window," which gives prisoners time to come forward with evidence that federal equitable intervention continues to be necessary to preserve prisoners' rights, is an integral part of the careful congressional crafting of the automatic stay.

Injunctions are already in place in all of the cases where the automatic stay could be applied. In those cases, it is reasonable for Congress to assume that any serious violation of the prisoners' rights would already be the subject of an enforcement action, motion for contempt, or motion to modify the injunction by the prisoners. Congress would be completely justified in believing that serious violations of

prisoners' rights would be identified for the supervising court long before the prison moved to vacate equitable relief.[3]

The prisoners reply that "where there is an existing decree the focus of counsel's attention will not be in finding constitutional violations, but on monitoring compliance with the decree." *Br. for French* at 29 n.6. To the extent that "monitoring compliance" is different than looking for constitutional violations, this response overlooks counsel's responsibilities under relevant professional conduct rules and Fed. R. Civ. P. 23. Nor can an attorney's choice about how to spend her time make the statute unconstitutional.[4]

Moreover, serious violations of constitutional rights such as violence against prisoners, deliberately indifferent medical care, or widespread impediments to access to courts could readily be shown in 90 days. Such showings would justify continuation of the underlying injunction, or at least the portions of it pertaining to the proved violations. 18 U.S.C. §3626(b)(3).

---

[3] As explained in the *Br. of Petitioners Miller, et al.*, at 24, the PLRA is structured to give prison officials incentives to move to vacate or modify the injunction only when they believe the prison meets constitutional standards. If prison officials predict incorrectly, and their motion is denied, they cannot again move to vacate or modify the injunction for one year. 18 U.S.C. §3626(b)(1). For the same reasons (and to avoid sanctions including adverse factual inferences under Fed. R. Civ. P. 37), prison officials have incentives to cooperate with discovery after moving to vacate.

[4] The *Taylor* class frets that a prisoner class might be without counsel when a motion to vacate is filed. *Brief of Amicus Curiae Plaintiff Class* at 15. If prisoners indicate to the district court ongoing problems with administration of an injunction, the district court would appoint counsel for the class. *E.g., Phillips v. Joint Legislative Committee*, 637 F.2d 1014, 1023 n.14 (5th Cir. 1981) (regarding appointment of class counsel), *cert. denied*, 456 U.S. 960 (1982). The absence of counsel for the class equates with compliance with the injunction.

Less serious violations, such as subtle problems with prisoners' diet, recreation, or education, might take more than 90 days to prove. But their less serious character makes the automatic stay of the injunction less problematic (and, indeed, may assist the prisoners in proving violations if prison policies change once the injunction is stayed). Prisoners retain the damage remedy for harms incurred during the time the injunction is stayed.

This calibration of relief is part and parcel of congressional crafting of the automatic stay to balance prisoners' need for federal injunctive relief when there are violations against prisons' right to be free from judicial supervision when there are not. Its construction preserves the core judicial function, and it is constitutional.

C. Section 3626(e)(2) does not prescribe a rule of decision.

The automatic stay does not prescribe any rule of decision whatsoever. Rather, Congress crafted the provision to fully preserve the district court's authority to rule on the merits of the motion to vacate and prescribe appropriate relief if it finds any federal violation.

The prisoners' discussion of this principle to §3626(e)(2) is extremely brief, only the last six sentences of a section that mostly recounts the holding in *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871). *Br. for French* at 20-24. Their short discussion incorrectly describes the way §3626(e)(2) acts on prison injunctions. The automatic stay does not "instruct[ ] courts to retroactively revise a prior judgment and to enter a decision . . . in the government's favor . . ." *Br. for French* at 24.

Rather, in accordance with Article III, §2, the automatic stay places a substantive limitation on federal district courts' enforcement power. Once 30 (or 90) days pass, the district court is precluded from enforcing the existing injunction until the prisoners are able to prove the need for further judicial involvement to cure an ongoing deprivation of federal rights or the court rules on the pending motion to vacate.

D. The automatic stay applies equally to consent decrees.

The injunction at issue in this case occurred after trial, not as the result of the parties' consent. The *amicus* brief of the *Taylor* class complains that the application of the automatic stay to consent decrees poses different constitutional problems than does application in this case. The *Taylor* class position is incorrect. *See, e.g., Watson v. Ray*, 192 F.3d 1153 (8th Cir. 1999) (applying PLRA to consent decree); *Cagle v. Hutto*, 177 F.3d 253 (4th Cir. 1999) (same).

Because the automatic stay does not act on the judgment, whether litigated or by consent, but rather acts directly on the federal courts' enforcement authority, the automatic stay violates no constitutional provision. Congress has authority to alter the federal courts' authority to enforce judgments prospectively, including consent decrees. The logical extension of the *Taylor* class's argument is that once a judgment is entered, Congress is powerless to alter the federal courts' authority regarding that judgment. The *Taylor* class supports that position with no authority, and there is none.

E. The automatic stay is not retroactive.

The central fallacy of the *amicus* brief of Public Citizen was discussed above in Part II.B. in connection with congressional authority to change federal courts' power to enforce injunctions prospectively. Public Citizen's position is that Congress cannot change federal judicial enforcement authority as to judgments granted in the past. *See Br. of Public Citizen* at 3, 21. The Court rejected that position in *Landgraf v. USI Film Products*, 511 U.S. 244, 273 (1994): "When the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." *Landgraf* thus makes clear that Congress has the authority to change federal judicial power prospectively, and such changes can be applied to judgments rendered in the past. *Id.* at 274.

Public Citizen fails to recognize that the judgment in this case already had its intended effect by causing prison officials to change conditions at the Pendleton prison to conform with constitutional standards. Continued judicial oversight no longer is necessary unless the prisoners can show a federal violation justifying continued relief. Public Citizen's position that judicial supervision must continue perpetually, *Br. of Public Citizen* at 5, 16, is profoundly antidemocratic, insulating control of prisons from elected and appointed officials with ultimate accountability to the public. *See, e.g., Board of Education v. Dowell*, 498 U.S. 237, 248 (1991) (stressing interest in local control of local institutions).

Conclusion

The Court should reverse the Seventh Circuit's judgment.

Respectfully submitted,

KAREN M. FREEMAN-WILSON
Attorney General of Indiana

JON LARAMORE
Deputy Attorney General
Counsel of Record

219 State House
Indianapolis, IN 46204
317-233-6582